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WASHINGTON

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Date: 10 03 81 Reviewer
June 4, 1942

Coordinator of Information.

My dear Mr. Donovan:

I have your letter of May 21, 1942, as follows:

"I have the honor to request your decision as to whether this office may be granted an exception in the application of the provisions of paragraph 44 of Standardized Government Travel Regulations as amended March 7, 1941 wherein it is stated in part that: 'The per diem in lieu of subsistence expenses will be held to include....transportation between places of lodging or where meals are taken and places of duty'. The decision and the exception ruling sought are conditioned upon the circumstances hereinafter described.

"The peculiarities of the duties of certain employees of the Office of the Coordinator are such that they are often charged with the custody of expensive and unique equipment as well as materials of extremely confidential import. It is necessary that the employees maintain physical control over the items mentioned. It further happens that the same employees in whose custody these materials are entrusted must make short visits to places officially designated in their duties, their hotel or place of lodging being used as a base for such trips. These official excursions occur with frequency and it has been discovered beyond a doubt that these trips are most expeditiously completed by the use of local taxicab services. Apart from bare expediency, however, and of more importance from a standpoint of efficient Government services are the following considerations:

"1. The employees must usually transport equipment of unique and valuable character such as cameras having special lenses, unduplicated film, etc. The safe handling of such equipment is of extreme importance. If the travel were performed through commercial facilities such as street cars or busses, substantial risks would be encountered and the traveler would be subject to undesirable physical exertion.

"2. Because of the physical characteristics of the property custodianship, the property must be transported with the same frequency as the traveler makes his trips.

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"3. Confidential materials such as documents, confidential film, etc., while they do not present the problem of cumbersome-ness present in the larger property items, are nevertheless of such nature as to make use of crowded public conveyances very dangerous and very inadvisable.

"4. The making of the trips described; the transportation of the properties; and the personal possession of confidential material are individually and severally a part of the express duties of the employees. They have no relationship whatever to the employees' personal conveniences and in no way relate to those expenses which might be properly itemized with subsistence allowances.

"Taxicab travel similar to that described herein as pertaining to employees in travel status is also necessarily performed by employees not in a travel status. It is requested that this related problem of allowable expense be embraced by your considerations.

"The necessity for the use of taxicabs has considerably increased in certain localities due to conditions occasioned by the war and the urgent nature of the activities of this organization. It appears necessary that additional consideration be given to the matter of providing adequate transportation facilities for the employees involved without requiring them to bear the related costs from personal funds.

"Inasmuch as the problems outlined above are of immediate administrative concern, it is respectfully requested that your decision be rendered at the earliest practicable date."

The Independent Offices Appropriation Act, 1942, approved April 5, 1941, under the heading, "Emergency Fund for the President", provides in pertinent part, as follows:

"To enable the President, through appropriate agencies of the Government, to provide for emergencies affecting the national security and defense and for each and every purpose connected therewith, and to make all necessary expenditures incident thereto for any purpose for which the Congress has previously made appropriation or authorization and without regard to the provisions of law regulating the expenditure of Government funds * * * and any waiver hereunder of the provisions of any law regulating such expenditure or such employment shall not be exercised by any agency unless the

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allocation to such agency or subsequent action of the President in connection therewith permits any such waiver to be availed of; \$100,000,000 * * *." (Underscoring supplied.)

The President, by a series of allocation letters, has made some of the funds thus appropriated available to you as Coordinator of Information for use in carrying out the functions and duties prescribed in Presidential Order of July 11, 1941--by which the office of Coordinator of Information was established. In Allocation Letter No. 42-34 of December 8, 1941, by which \$3,162,786 was made available to your office, it is provided that said funds may be used, among other things, for

"* * * travel expenses, including (1) actual transportation expenses and not to exceed \$10 per diem in lieu of subsistence and other expenses of persons serving as advisers while away from their homes without other compensation from the United States, and (2) travel expenses outside the United States without regard to the Standardized Government Travel Regulations and the Subsistence Expense Act of 1926, as amended, and Section 901 of the Act of June 29, 1936 (49 Stat. 2015); * * *"

Similar provisions are incorporated by reference in subsequent allocation letters dated March 3, March 20 and May 30, 1942.

It is particularly to be noted from the above-quoted excerpt from the letter of December 8, 1941, that the Standardized Government Travel Regulations, and the Subsistence Act of 1926, as amended, are made inapplicable only in the case of "travel expenses outside the United States." When this provision is considered in the light of the express stipulation in the Independent Offices Appropriation Act, 1942, quoted above, that in the use of such funds no waiver of provisions of law generally applicable in connection with expenditures

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of public funds shall be exercised by any agency "unless the allocation to such agency or subsequent action of the President in connection therewith permits any such waiver to be availed of", the conclusion appears inescapable that travel expenses of employees of your agency in the United States are governed by the above-mentioned Government travel laws and regulations upon the same basis as other employees of the United States. That being the case there is no authority in this office to grant "an exception" in the application of the provisions of paragraph 44 of Standardized Government Travel Regulations to employees of your office as requested in the first paragraph of your letter. In other words, if taxicab travel upon the basis, and for the purposes, outlined in your letter does not constitute a reimbursable expense item in the case of Government employees generally, it does not constitute a reimbursable item in the case of employees of your office.

There remains for consideration the question whether, under existing law, Government employees may be permitted to travel by taxicab under circumstances such as those presented in your letter, and receive reimbursement therefor in addition to their usual per diem allowance.

Paragraph 44 of the Standardized Government Travel Regulations provides as follows:

"Definition.—The per diem in lieu of subsistence expenses will be held to include all charges for meals; lodgings; personal use of room during daytime; baths; all fees and tips to waiters, porters,

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baggage men, bell boys, hotel maids, dining-room stewards and others on vessels, and hotel servants in foreign countries, in connection with subsistence and transportation; telegrams and telephone calls reserving hotel accommodations; laundry; cleaning and pressing of clothing; fans and fires in rooms; transportation between places of lodgings or where meals are taken and places of duty. (See pars. 4, 8 (b).)" (Underscoring supplied.)

While it is clear from the above-quoted provision of the travel regulations that the usual transportation expenses incurred by an employee in a travel status in going from place of lodging, or where meals are taken, to place of duty are included in his per diem allowance, attention is invited to the special provisions relating to transportation as contained in paragraphs 8 (b) and 11 of the Standardized Government Travel Regulations, as follows:

"8. * * *

"(b) Where the nature and location of the work where temporarily stationed are such that meals and lodging can not be procured there, and the daily travel required to procure subsistence at the nearest available place is not such as made by the public generally for that purpose, nor performed for the personal convenience of the traveler, the expense thereof will be considered as necessary transportation not incidental to subsistence. A full statement of the necessity for such daily travel should accompany the expense account.

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"11. Special conveyances.--The hire of boat, automobile, aircraft, livery, or other special conveyance will be allowed only when no public or regular means of transportation are available or when such regular means of transportation cannot be used advantageously in the interest of the Government, in which case a satisfactory explanation must accompany the account. (See par. 83 (e).)"

It will thus be seen that not all taxicab travel—even between places of lodging or where meals are taken and places of duty—is required to be regarded as within the per diem allowance. In other

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words, although a taxicab fare between place of lodging or where meals are taken and place of duty generally is to be regarded as an item of subsistence or incident thereof which is covered by an employee's per diem, nevertheless where it is necessary in the interest of the Government for the employee to take with him, while traveling between place of lodging or where meals are taken and place of duty, heavy and bulky Government-owned equipment, the use of which is required in the performance of his official duties, the taxicab fare to transport the equipment may be regarded as an item of transportation not chargeable to per diem in lieu of subsistence. Of course, the transportation of such equipment must be in response to an actual Government need, such as safety, secrecy, etc., and not for the personal convenience or preference of the employee. In such exceptional cases transportation by special conveyance would appear to be justified upon the ground that "regular means of transportation can not be used advantageously in the interest of the Government" within the meaning of paragraph 11, supra. Attention is invited, however, to the requirement in paragraph 11 that when travel of this nature is performed "a satisfactory explanation must accompany the account", and the employee should accordingly be in a position, in all such cases, to establish that an actual need existed for travel by special conveyance.

The foregoing answers considerations numbered 1, 2, and 4, in your letter, supra.

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With reference to consideration numbered "3", the fact that an employee carries with him confidential documents, film, etc., not of unusual weight or size may not be regarded as justifying special transportation—except in instances where the existence of exceptional circumstances are established, as for example where it is definitely shown that the safety of documents, etc., was subject to a jeopardy if usual public conveyances were used which did not exist if special conveyance such as a taxicab were used. In such cases the burden would be upon the employee to establish affirmatively the need for such special conveyance. In that connection, it was stated in decision of July 29, 1938, 18 Comp. Gen. 106, 108, that:

"It has long been held that taxicabs may not be substituted for cheaper means of transportation when available unless the Government business could not be satisfactorily performed by such means of transportation. See A-57680, October 15, 1934. The question here appears whether the evidence furnished in support of the payments made or proposed to be made for taxicab transportation may be accepted as showing the official necessity for such transportation instead of less expensive public transportation facilities usually available."

Taxicab travel for the special purposes above outlined would appear to be available upon the same basis, and subject to the same restrictions, whether the employee is or is not in a travel status—the incurrence of any such cost being authorized under the special provisions of paragraph 11 of the Standardized Government Travel Regulations rather than under the travel status "per diem in lieu of subsistence" provision of paragraph 44.

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Referring to the penultimate paragraph of your letter, there is no existing legal basis upon which it may be concluded generally that Government employees may be spared the inconvenience or additional expense in going to or from their homes or lodgings from and to their place of duty because of the crowded conditions of public transportation systems caused by the war emergency.

Respectfully,


Comptroller General
of the United States.